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\*\*\* Current through the 2012 Regular Session \*\*\*  
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Title 66 Property  
Chapter 1 Estates in Property  
Part 2 Tennessee Uniform Statutory Rule Against Perpetuities

**GO TO THE TENNESSEE ANNOTATED STATUTES ARCHIVE DIRECTORY**

*Tenn. Code Ann. § 66-1-201 (2012)*

**66-1-201. Short title.**

This part shall be known and may be cited as the "Tennessee Uniform Statutory Rule Against Perpetuities."

**HISTORY:** Acts 1994, ch. 654, § 1.

**NOTES: Cross-References.**

Construction of "dying without heirs", § 66-1-104.

**Law Reviews.**

Freeing Property Owners From the RAP Trap: Tennessee Adopts the Uniform Statutory Rule Against Perpetuities (Amy Morris Hess), 62 *Tenn. L. Rev.* 267 (1995).

**Collateral References.**

28 *Am. Jur. 2d Estates* § 384.

70 C.J.S. Perpetuities § 12 et seq.



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*Tenn. Code Ann. § 66-1-202 (2012)*

**66-1-202. Validity of nonvested property interests and powers of appointment.**

(a) A nonvested property interest is invalid unless one (1) of the following conditions is satisfied:

- (1) When the interest is created, it is certain to vest or terminate no later than twenty-one (21) years after the death of an individual then alive;
- (2) The interest either vests or terminates within ninety (90) years after its creation; or
- (3) The interest satisfies the conditions set forth in subsection (f).

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless one (1) of the following conditions is satisfied:

- (1) When the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than twenty-one (21) years after the death of an individual then alive;
- (2) The condition precedent either is satisfied or becomes impossible to satisfy within ninety (90) years after its creation; or
- (3) The condition precedent satisfies the conditions set forth in subsection (f).

(c) A non-general power of appointment or a general testamentary power of appointment is invalid unless one (1) of the following conditions is satisfied:

- (1) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one (21) years after the death of an individual then alive; or
- (2) The power is irrevocably exercised or otherwise terminates within ninety (90) years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subdivision (a)(1), (b)(1), or (c)(1), the possibility that a child will be born to an individual after the individual's death is disregarded.

(e) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to disallow the vesting or termination of any interest or trust beyond, seeks to postpone the vesting or termination of any interest or trust until, or seeks to operate in effect in any similar fashion upon, the later of:

- (1) The expiration of a period of time not exceeding twenty-one (21) years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or

(2) The expiration of a period of time that exceeds or might exceed twenty-one (21) years after the death of the survivor of lives in being at the creation of the trust or other property arrangement;

such language is inoperative to the extent it produces a period of time that exceeds twenty-one (21) years after the death of the survivor of the specified lives.

(f) As to any trust created after June 30, 2007, or that becomes irrevocable after June 30, 2007, the terms of the trust shall require that all beneficial interests in the trust vest or terminate or the power of appointment is exercised within three hundred sixty (360) years.

**HISTORY:** Acts 1994, ch. 654, § 2; 2007, ch. 144, §§ 14-16; 2010, ch. 725, § 20.

**NOTES: Amendments.**

The 2007 amendment added (a)(3); added (b)(3); and added (f).

The 2010 amendment, in (f), deleted the proviso from the end of the first sentence which read: "; provided, however, that this subsection (f) shall only apply to trusts that grant a power of appointment at death to at least one (1) member of each generation of beneficiaries who are beneficiaries of the trust more than ninety (90) years after the creation of the interest", and deleted the former second sentence which read: "The permissible appointees of each power of appointment shall at least include all descendants of the beneficiary, yet may include other persons."

**Effective Dates.**

Acts 2007, ch. 144, § 17. July 1, 2007.

Acts 2010, ch. 725, § 25. July 1, 2010.

**Cross-References.**

Construction of "dying without heirs", § 66-1-104.

**Section to Section References.**

This section is referred to in §§ 66-1-203, 66-1-204, 66-1-205.



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*Tenn. Code Ann. § 66-1-203 (2012)*

**66-1-203. Creation of nonvested property interest or power of appointment.**

(a) Except as provided in subsections (b) and (c) of this section and in § 66-1-206(a), the time of creation of a nonvested property interest or a power of appointment is determined by other applicable statutes or, if none, under general principles of property law.

(b) For purposes of this part, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:

(1) A nonvested property interest; or

(2) A property interest subject to a power of appointment described in §§ 66-1-202(b) or (c);

the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of this part, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

**HISTORY:** Acts 1994, ch. 654, § 3.

**NOTES: Cross-References.**

Construction of "dying without heirs", § 66-1-104.



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*Tenn. Code Ann. § 66-1-204 (2012)*

**66-1-204. Judicial reformation of property disposition.**

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety (90) years allowed by §§ 66-1-202(a)(2), (b)(2) or (c)(2) if any of the following conditions is satisfied:

(1) A nonvested property interest or a power of appointment becomes invalid under the statutory rule against perpetuities provided in § 66-1-202;

(2) A class gift is not but might become invalid under the statutory rule against perpetuities provided in § 66-1-202, and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) A nonvested property interest that is not validated by § 66-1-202(a)(1) can vest but not within ninety (90) years after its creation.

**HISTORY:** Acts 1994, ch. 654, § 4.

**NOTES: Cross-References.**

Construction of "dying without heirs", § 66-1-104.



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*Tenn. Code Ann. § 66-1-205 (2012)*

**66-1-205. Exceptions to rule.**

*Section 66-1-202* does not apply to any of the following:

(1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(A) A premarital or postmarital agreement;

(B) A separation or divorce settlement;

(C) A spouse's election;

(D) A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(E) A contract to make or not to revoke a will or trust;

(F) A contract to exercise or not to exercise a power of appointment;

(G) A transfer in satisfaction of a duty of support; or

(H) A reciprocal transfer;

(2) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) A power to appoint a fiduciary;

(4) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one (1) or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their bene-

ficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) A property interest, power of appointment, or arrangement that was not subject to the common law rule against perpetuities or is excluded by another statute of this state.

**HISTORY:** Acts 1994, ch. 654, § 5.

**NOTES: Cross-References.**

Construction of "dying without heirs", § 66-1-104.



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*Tenn. Code Ann. § 66-1-206 (2012)*

**66-1-206. Application -- Retroactivity.**

(a) Except as provided in subsection (b), this part applies to nonvested property interests and unexercised powers of appointment regardless of whether they were created before, on, or after July 1, 1994. A property interest shall not be deemed vested merely because it would vest if the common law rule against perpetuities were violated.

(b) This part does not apply to any property interest or power of appointment the validity of which has been determined by a final judgment in a judicial proceeding or by a settlement among interested persons prior to July 1, 1994.

**HISTORY:** Acts 1994, ch. 654, § 6.

**NOTES: Cross-References.**

Construction of "dying without heirs", § 66-1-104.

**Section to Section References.**

This section is referred to in § 66-1-203.





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*Tenn. Code Ann. § 66-1-207 (2012)*

**66-1-207. Preemption of common law.**

This part supersedes the common law rule against perpetuities in this state.

**HISTORY:** Acts 1994, ch. 654, § 7.

**NOTES: Cross-References.**

Construction of "dying without heirs", § 66-1-104.



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*Tenn. Code Ann. § 66-1-208 (2012)*

**66-1-208. Application and construction.**

This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among the states enacting it.

**HISTORY:** Acts 1994, ch. 654, § 8.

**NOTES: Cross-References.**

Construction of "dying without heirs", § 66-1-104.